



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 17-00085
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett E. Petcher, Esq., Department Counsel  
For Applicant: Peter J. Cresci, Esq.

11/28/2017

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**Decision**

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MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 28, 2015. On February 13, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006 (2006 AG).

Applicant answered the SOR on March 6, 2017, and requested a hearing before an administrative judge. The Government was ready to proceed on March 23, 2017, and the case was assigned to me on May 3, 2017. On July 10, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 10, 2017. I convened the hearing as scheduled. I admitted Government Exhibits (GE) 1 through 4 into evidence, without objection. I appended a letter that Government sent to Applicant as Hearing Exhibit (HE I) and Government's exhibit list as HE II. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A through E, which I

admitted into evidence, without objection. At Applicant's request, I left the record open to August 24, 2017. Applicant timely provided an additional document that I admitted into evidence as AE F, without objection. DOHA received the transcript (Tr.) on August 17, 2017.

On June 8, 2017, the DOD implemented new AG (2017 AG).<sup>1</sup> Accordingly, I have applied the 2017 AG.<sup>2</sup> However, I have also considered the 2006 AG, because they were in effect on the date the SOR was issued. I conclude that my decision would have been the same under either version.

### Findings of Fact<sup>3</sup>

Applicant, age 37, has been married to his wife for 13 years. He has four children, ages 18, 12 (twins), and 9. He received a bachelor's degree in 2010. Since July 2015, Applicant has been employed by the defense contractor sponsoring his first application for a security clearance.<sup>4</sup>

The SOR alleges that, after a 2008 Chapter 7 bankruptcy discharge (SOR ¶ 1.o), Applicant accrued 14 delinquent debts totaling \$11,591, including eight federal student loan accounts past due in the total approximate amount of \$1,171 (SOR ¶¶ 1.a through 1.d, 1.g through 1.i, and 1.l), five delinquent credit-card accounts totaling \$6,806 (SOR ¶¶ 1.e, 1.f, 1.j, 1.k, and 1.m), and one \$3,614 judgment for a delinquent medical account (SOR ¶ 1.n). In his SOR answer, Applicant admitted each of the SOR allegations except for SOR ¶ 1.n,<sup>5</sup> which was established by the credit reports.<sup>6</sup>

Applicant resolved the debt alleged in SOR ¶ 1.k, which involved the same delinquent account alleged in SOR ¶ 1.m, in December 2016.<sup>7</sup> In August 2017, he

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<sup>1</sup> On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD 4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD 4 ¶ B, *Purpose*). The SEAD 4 became effective on June 8, 2017 (SEAD 4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD 4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD 4 ¶ C, *Applicability*).

<sup>2</sup> ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

<sup>3</sup> Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer, SCA (GE 1), and the summary of his subject interview (GE 2).

<sup>4</sup> See also Tr. at 14, 25.

<sup>5</sup> I considered that Applicant did not specifically address SOR ¶ 1.l when he listed the debts to which he admitted under "Department of Education/Navient." However, in light of the record as a whole, I construed his omission as inadvertent. See e.g. Tr. at 19.

<sup>6</sup> GE 3 and 4.

<sup>7</sup> AE E; Tr. at 19, 23, 29-30, 45-48.

established a payment arrangement to repay the debt alleged in SOR ¶ 1.e, in 12 monthly installments beginning September 2017.<sup>8</sup> Applicant did not, however, provide documentary evidence that he actually made any of those payments.

Applicant claimed, without providing any corroborating documentary evidence, that he made payments in December 2016 and January 2017 to bring his student loan accounts current (SOR ¶¶ 1.a through 1.d, 1.g through 1.i, and 1.l), and that he planned to make additional monthly payments beginning in September 2017 to repay the debt in full. He also claimed, without providing any corroborating documentary evidence, that he entered into payment arrangements to resolve the debts alleged in SOR ¶¶ 1.f and 1.j, that he had been making regular payments pursuant thereto, and that he paid in full the debt alleged in SOR ¶ 1.j.<sup>9</sup>

Applicant denied the debt alleged in SOR ¶ 1.n on the basis that it was an account that belonged to his deceased father, who shares his first and last name, because the address on the judgment was the same as the address where his father lived, and the expenses were associated with a time period when his father was hospitalized. Applicant claimed that, since learning of the judgment during his May 2016 security clearance interview, he contacted the creditor to get information about the debt and filed an online dispute with a credit bureau agency. Applicant did not provide any documentary evidence to corroborate either the basis of his claim or his efforts to dispute it.<sup>10</sup>

Applicant attributed his Chapter 7 bankruptcy (SOR ¶ 1.o) to the fact that he and his wife were then living outside of their means, which resulted in debts that exceeded their income. He stated that the bankruptcy gave them a fresh start, and that they learned a lesson to live within their means, which is how they now live. He attributed his post-bankruptcy debts (SOR ¶¶ 1.a through 1.m) to two periods of unemployment in 2014 and 2015. Applicant held a steady full-time job from approximately July 2008 through June 2014, when he was involuntarily laid off. He was unemployed from June 2014 through January 2015, when he found full time employment. Due to inconsistent pay, he resigned in April 2015, and was again unemployed through July 2015, when he began working for his current employer.<sup>11</sup>

Applicant had been earning \$55,000 per year through July 2014. He started earning \$68,000 per year in July 2015, and after two promotions, is now earning \$78,000 per year. As of September 2017, his wife will be employed full time at an annual salary of \$53,000.<sup>12</sup> His wife had been mainly a stay-at-home mother, who

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<sup>8</sup> AE F.

<sup>9</sup> See *also* Tr. at 19-20, 22, 37-39; 42-45.

<sup>10</sup> GE 2 at 7; Tr. at 17-19, 40-42, 48-50.

<sup>11</sup> GE 2 at 5-8; Tr. at 14-15, 24, 30-36.

<sup>12</sup> AE A and B; Tr. at 14-15; 26-27, 30-35.

occasionally worked part-time.<sup>13</sup> Applicant's wife was primarily responsible for handling the family's finances until he took a more active role following his application for a security clearance. They now work together through a budget to ensure that their bills are timely paid and to repay their delinquent debts.<sup>14</sup> Applicant has not had any financial counseling, either in connection with his bankruptcy or otherwise.<sup>15</sup>

In year 2016, Applicant's manager rated his performance as "exceeding expectations," and declared him a "tremendous asset" to his employer.<sup>16</sup> Applicant runs a travel softball organization, and is a member of the Knights of Columbus and the board of his local little league team.<sup>17</sup>

## **Policies**

"[N]o one has a 'right' to a security clearance."<sup>18</sup> As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information."<sup>19</sup> The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>20</sup>

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

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<sup>13</sup> GE 2 at 4-8; Tr. at 33, 34, 39-40.

<sup>14</sup> GE 2 at 5-8. Tr. at 28, 57-58.

<sup>15</sup> Tr. at 65.

<sup>16</sup> AE C.

<sup>17</sup> Tr. at 29.

<sup>18</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>19</sup> *Egan* at 527.

<sup>20</sup> EO 10865 § 2.

extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>21</sup> Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR.<sup>22</sup> “Substantial evidence” is “more than a scintilla but less than a preponderance.”<sup>23</sup> The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.<sup>24</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>25</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>26</sup>

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>27</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denials.”<sup>28</sup>

## **Analysis**

### **Guideline F (Financial Considerations)**

The concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise

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<sup>21</sup> EO 10865 § 7.

<sup>22</sup> See *Egan*, 484 U.S. at 531.

<sup>23</sup> See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>24</sup> See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

<sup>25</sup> Directive ¶ E3.1.15.

<sup>26</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>27</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>28</sup> *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and credit reports establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established. Applicant has numerous delinquent debts that remain unresolved.

AG ¶ 20(b) is not established. Applicant's 2014 and 2015 unemployment were circumstances largely beyond his control. However, Applicant did not meet his burden to prove that he acted responsibly to address his delinquent debts.

AG ¶ 20(d) is not established. I credit Applicant with filing for bankruptcy to address his pre-bankruptcy debts, and with the efforts he has made to resolve his post-bankruptcy debts, including the resolution of the debt alleged in SOR ¶¶ 1.k and 1.m. However, without corroborating documentary evidence, I cannot conclude that Applicant made payments pursuant to the agreement he established to resolve the debt alleged in SOR ¶ 1.e; that he made payments in December 2016 and January 2017 to bring current the student loan debts alleged in SOR ¶¶ 1.a through 1.d, 1.g through 1.i, and 1.l, or the monthly payments beginning September 2017; or that he entered into payments arrangements, and has been making payments pursuant thereto, to resolve the debts alleged in SOR ¶¶ 1.f and 1.j.

AG ¶ 20(e) is not established. While Applicant articulated a reasonable basis to dispute the debt alleged in SOR ¶ 1.n, he did not provide any documentary proof to substantiate his dispute or sufficient evidence of actions to resolve the issue.

I have considered the progress that Applicant has made in tackling his delinquent debt and the fact that he is not required to be debt-free in order to qualify for a security clearance.<sup>29</sup> However, because he did not provide sufficient documentary evidence to corroborate his hearing testimony, he has fallen short of meeting his burden to mitigate the Guideline F concerns at this time.<sup>30</sup>

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation

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<sup>29</sup> ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct" that is, actions which evidence a serious intent to effectuate the plan).

<sup>30</sup> It is reasonable for an administrative judge to expect an applicant to present documentary evidence showing resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). Applicant was candid and sincere at the hearing, performs well at work, and volunteers to serve his local community. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine  
Administrative Judge